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MCDONNELL BOEHNEN HULBERT & BERGHOFF
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of
Hasel, et al.
Application No. 09/186,869
Filed: November 4, 1998
Attorney Docket No. 98.429

ON PETITION

This is a decision on the "Request to Withdraw the Holding of Abandonment and Conditional Petition to Revive", filed April 19, 2002, which is being treated as a petition under 37 CFR 1.10(e) to accept correspondence not received by the USPTO as having been timely filed.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice of Non-Compliant Amendment mailed May 2, 2001. This Notice set a period of one month to submit a clean and marked-up version of the amended paragraphs as required by 37 CFR 1.121. No reply to the Notice having been received, the above-identified application was held abandoned on June 3, 2001. A Notice of Abandonment was mailed on March 12, 2002.

Petitioner contends that he did submit a reply to the Notice of Non-Compliant Amendment consisting of clean and marked up versions of the amended paragraphs. In support, Petitioner has included a copy of his reply to the Notice, indicating that the date of deposit with the USPS was on May 9, 2001, and bearing Express Mail Number EL 604651670 US.

37 CFR 1.10(e) states that any correspondence not received by the USPTO will be considered to have been filed on the USPS deposit date, provided:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fees(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon...[and] a copy of the "Express Mail" mailing label showing the "date-in...."¹

¹ 37 CFR 1.10(e).

Here, Petitioner promptly filed the petition, doing so just over one month after the mailing of the Notice of Abandonment. In addition, Petitioner has included a copy of the originally deposited paper bearing Express Mail Number EL 604651670 US. Lastly, Petitioner has included a copy of the Express Mail mailing label showing a date in of May 9, 2001.

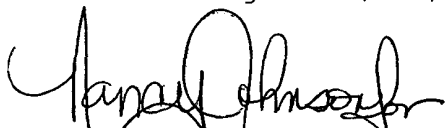
In view thereof, **the holding of abandonment is withdrawn.**

Given the basis for granting this decision, consideration of the petition under 37 CFR 1.137(b) was unnecessary. Accordingly, the \$1280 fee submitted for the petition under 37 CFR 1.137(b) has been refunded to Deposit Account No. 50-0639.

There is no indication that the person signing the present petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the present petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent and change of correspondence address must be submitted. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

The application file is being forwarded to Technology Center 1600 for consideration of the amendment filed April 24, 2001 and the clean and marked-up versions of the amended paragraphs, filed May 9, 2001 and submitted with the instant petition.

Telephone inquiries should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071-2899